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No. 87-723

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

WILLIAM DOUGHERTY,

Petitioner,

v.

PARSEC, INC., TRUCK DRIVERS, CHAUFFEURS AND HELPERS, LOCAL UNION NO. 100 AND THE SEABOARD SYSTEM RAILROAD,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF FOR RESPONDENT PARSEC, INC. IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

1. Whether section 301 of the Labor Management Relations Act preempts the claim of an employee, covered by a collective bargaining agreement, alleging tortious interference with his right to be discharged only for just cause.

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BRIEF FOR RESPONDENT PARSEC, INC. IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A 34-59) is reported at 824 F.2d 1477. The opinion of the district court is set forth in Petitioner's Appendix B 60-75.

JURISDICTION

The judgment of the court of appeals (Pet. App. A 34-59) was entered July 22, 1987. The corrected petition for a writ of certiorari was filed on October 29, 1987. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

This case involves 29 U.S.C. § 185(a), pertinent provisions of which are set forth in Appendix A.

DISCLOSURE OF CORPORATE AFFILIATIONS

Respondent Parsec, Inc. ("Parsec") is a wholly owned subsidiary of Budco Group, Inc., a closely held corporation.

COUNTERSTATEMENT OF THE CASE

Parsec adopts the Counterstatement of the Case set forth by Respondent The Seaboard System Railroad ("Seaboard") in its Brief In Opposition, at pages 2 and 3.

REASON FOR DENYING THE WRIT

I. PETITIONER'S CLAIM PROPERLY WAS HELD TO BE PREEMPTED BY § 301 OF THE LABOR MANAGEMENT RELATIONS ACT, 29 U.S.C. § 185(a), PURSUANT TO THIS COURT'S DECISION IN *ALLIS-CHALMERS*.

Petitioner's claim, however cloaked, is nothing more than a claim that he was wrongfully discharged in violation of the terms of a collective bargaining agreement. The resolution of this claim necessarily involves the collective bargaining agreement and federal labor policy, and therefore is properly preempted under *Allis-Chalmers Corp.* v. *Lueck*, 471 U.S. 202 (1985). Furthermore, the alleged wrong for which Petitioner seeks redress can be remedied by means that will not subvert the Congressional policy favoring arbitral resolution of industrial disputes.

A. Petitioner's Tortious Interference Claim Significantly Affects The Labor Agreement.

As Petitioner's former employer, Parsec disputes Petitioner's claim that his state tort claim "will have no effect upon the labor agreement and the parties to that agreement." Pet. 8. The Sixth Circuit Court of Appeals correctly recognized that Petitioner's tortious interference claim was "inextricably intertwined" with the collective agreement when it held below that:

> The only contract with which any interference could be charged is the collective bargaining agreement.

Dougherty v. *Parsec, Inc.*, 824 F.2d 1477, 1478-79 (6th Cir. 1987).

Beyond this obvious relationship, were Petitioner permitted to pursue such a claim against his employer's customer, Seaboard, it would significantly affect the contractual relationship involved, a relationship now balanced and carefully

governed by well-established federal law. Part of the "benefit of the bargain" for an employer such as Parsec in its collective bargaining agreement is that its employees are restricted in their remedies, should Parsec breach the agreement, to those provided by the negotiated grievance procedure. In this manner, Parsec's business cannot be injured by employee suits against its customers for incidents covered by the collective bargaining agreement between Parsec and Local 100. Important to Parsec's agreement to be bound by an arbitrator's decision is the insulation from lawsuits that the arbitral process provides Parsec's customers with respect to *all* matters arising out of the collective agreement. Arbitration would cease to play a cental role in this country's "system of industrial self-government," *United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, 581 (1960), if it assumed a role collateral or possibly subsidiary to state court tort actions against customers, potential customers, supervisors, co-workers, *etc.* Such actions would become the rule rather than a narrow exception, because of the remedies associated with such tort actions.

Parsec employed Petitioner and Parsec discharged Petitioner. Whether Seaboard influenced that decision, and whether any such influence was wrongful, are not questions that Petitioner is entitled to have answered under state law. Those questions are merely restatements of *the* question that Petitioner *was* entitled to have, and did have, answered by the grievance process, *viz.*, whether he was discharged for just cause pursuant to the terms of the collective bargaining agreement.

The plaintiff in *Hillard* v. *Dobelman*, 774 F.2d 886 (8th Cir. 1985) (per curiam), attempted a similar circumvention of federal labor law by claiming that his supervisors tortiously procured his discharge. As the Eighth Circuit recognized:

> [I]n reality, Hillard was suing [her employer] for her discharge in violation of the collective-bargaining agreement. Because the plaintiff's asserted right and defendants' alleged duty (not to interfere with Hillard's

> employment contract) arise from the collective-bargaining agreement, evaluation of the state tort claim depends upon interpretation of the collective-bargaining agreement (specifically, the just-cause provision). As such, the state claim is pre-empted by federal labor law.

Id. at 887. So too, in *Scott* v. *Machinists Lodge 190*, 827 F.2d 589, 592 (9th Cir. 1987), the court held that a claim for interference with contractual relations was preempted by § 301 because it is "obviously connected with interpretation of the cntract." In *Satterfield* v. *Western Electric Co.*, 758 F.2d 1252 (8th Cir. 1985), a former employer's tortious interference claim against his former employer's customer was preempted under the National Labor Relations Act. Analogously, in this case, Petitioner's real claim is that he was discharged without just cause by Parsec in violation of the collective agreement.

No matter how Petitioner attempts to characterize his discharge, its propriety or impropriety is wholly dependent upon the terms of the collective agreement and § 301 preempts any derivative tort claim that Petitioner would prefer to assert. As this Court stated in *Allis-Chalmers* v. *Lueck*, 471 U.S. 202, 219-20 (1985):

> Since nearly any alleged willful breach of contract can be restated as a tort claim for breach of a good-faith obligation under a contract, the arbitrator's role in every case could be bypassed easily if § 301 is not understood to pre-empt such claims. Claims involving vacation or overtime pay, work assignment, unfair discharge — in short, the whole range of disputes traditionally resolved through arbitration — could be brought in the first instance in state court by a complaint in tort rather than in contract. A rule that permitted an individual to sidestep available grievance procedures would cause arbitration to lose most of its effectiveness, *Republic Steel Corp.* v. *Maddox*, [citations omitted], as well as eviscerate a central tenet of federal labor-contract law under § 301 that

> it is the arbitrator, not the court, who has the responsibility to interpret the labor contract in the first instance.

This Court's reasoning in *Allis-Chalmers* applies with equal force to Petitioner's claim, and the writ should be denied.

B. The Right Petitioner Seeks To Assert Is Not A Non-Negotiable State Law Right That Exists Independent Of The Labor Agreement.

Petitioner contends that in *Allis-Chalmers* this Court announced a rule that "[n]on negotiable state-law (sic) rights and obligations which exist independent of the labor agreement will not be preempted" (Pet. 7), and that the decision of the Sixth Circuit Court of Appeals in this case ignores this principle. As demonstrated above, the claim is not independent of the labor agreement. Furthermore, it is not "non-negotiable." Petitioner and his union had the power, through grievance and arbitration, to dispute whether Petitioner's discharge was improperly procured by Seaboard. Petitioner's union negotiated contractual provisions that he could be discharged only for just cause, and that he could challenge his employer's decisions through a grievance resolution procedure. Similarly but more specifically, the Union could have negotiated for a provision prohibiting "customer preference" discharges. Thus, not only is Petitioner's general right to be discharged only for just cause a negotiated right, but the interrelated right he asserts to be free from contractual interference also is negotiable. As in *Allis-Chalmers*, 471 U.S. at 213, federal labor law preempts Petitioner's alleged 'right' to a cause of action against Seaboard because it is a right that "can be waived or altered by agreement of private parties".

C. Petitioner Is Not Without A Remedy.

Petitioner contends that § 301 can have no preemptive effect on his tortious interference claim because he otherwise would have no remedy against Seaboard. Parsec adopts

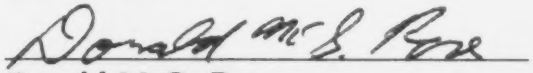
Seaboard's arguments at pages 8-9 of its Brief In Opposition that this issue was not raised below and is not one on which there exists any divergence of Circuit Court opinion.

In addition, Parsec submits that Petitioner in fact has a remedy for the alleged wrong. The labor agreement provides a grievance and arbitration remedy that permits him to claim that Seaboard's alleged interference with his employment was not just cause. § 301 provides a remedy if the arbitral process or his union's pursuit of his rights were flawed. *United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); *Vaca* v. *Sipes*, 386 U.S. 171 (1967).

CONCLUSION

For the reasons set forth above, Respondent, Parsec, Inc., respectfully submits that the writ should be denied.

Respectfully,



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CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Brief For Respondent, Parsec, Inc. In Opposition were served by regular United States mail, first class, postage prepaid, this 25th day of November, 1987, upon:

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APPENDIX A

29 U.S.C. § 185

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

* * *

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